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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/653,039	09/01/2000	David J. Pawson	50277-1533	6577
7590	08/12/2005			EXAMINER OSMAN, RAMY M
DEREK J. WESTBERG LAW OFFICE OF DEREK J. WESTBERG TWO NORTH SECOND STREET SUITE 1390 SAN JOSE, CA 95113			ART UNIT 2157	PAPER NUMBER
DATE MAILED: 08/12/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/653,039	PAWSON, DAVID J.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Ramy M. Osman	2157	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 09 June 2005.
- 2a) This action is FINAL.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 53-81 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 53-81 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____	6) <input type="checkbox"/> Other: _____

## **DETAILED ACTION**

### ***Status of Claims***

1. This communication is responsive to amendments filed on June 9, 2005. Claims 1-52 were cancelled, and claims 53-81 were newly added. Claims 53-81 are pending.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. **Claims rejected under 35 U.S.C. 102(b) as being anticipated by Forler et al (U.S. Patent No. 5,327,176).**

4. In reference to claims 53,61,65,71 and 79-81, Forler teaches a method, computer program product and a stream server system respectively, of operating a stream server, the method comprising:

receiving a signal from a client device, said signal including an indication of a client requested presentation action that, when put into effect by the stream server, involves reducing a data rate of a first data stream being sent from the stream server to the client device or eliminating the transmission of the first data stream to the client device, the first data stream including data of a first type (column 2 line 65 – column 3 line 11);

implementing the client requested presentation action, said act of implementing the client requested presentation action including reducing the data rate of the first data stream or eliminating the transmission of the first data stream to the client device (column 3 lines 1-28); and

determining an amount that a data rate of a second data stream including data of a second type may be increased as a result of an effect on transmission bandwidth corresponding to the reduction in the data rate of the first data stream or the elimination of the first data stream (column 3 line 45 – column 4 line 23).

5. In reference to claims 54,62 and 72, Forler teaches the method and computer program product of claims 53,61 and 71 respectively, wherein said first type of data is audio data; and said indication comprises an indication of a client requested action to reduce or eliminate the transmission of audio data to the client device (column 2 line 65 – column 3 line 11).

6. In reference to claims 55,63 and 73, Forler teaches the method and computer program product of claims 54,62 and 72 respectively, wherein said indication comprises: an indication that audio be muted (column 3 lines 1-28).

7. In reference to claims 56 and 74, Forler teaches the method and computer program product of claims 53 and 71 respectively, wherein the act of determining an amount that a data rate of a second data stream may be increased comprises: determining an amount of bandwidth that is freed up by reducing the data rate of the first data stream or eliminating the first data stream (column 2 line 65 – column 3 line 28).

***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. **Claims 57-60 rejected under 35 U.S.C. 103(a) as being unpatentable over Forler et al (U.S. Patent No. 5,327,176) in view of Safadi (US Patent No 6,487,721).**

10. In reference to claim to 57,67 and 75, Forler teaches the method and computer program product of claims 56,66 and 71 respectively. Forler fails to explicitly teach further comprising: including both said first and second streams in a Single Program Transport Stream which is sent to said client device. However, Safadi teaches encoding analog programs to provide single program transport streams (SPTS) for the purpose of digitizing and encoding according to digital standards (column 4 lines 45-55 and column 6 lines 15-50).

It would have been obvious for one of ordinary skill in the art to modify Forler by including both said first and second streams in a Single Program Transport Stream which is sent to said client device as per the teachings of Safadi for the purpose of digitizing and encoding according to digital standards.

11. In reference to claims to 58,68 and 76, Forler teaches the method and computer program product of claims 53,65 and 71 respectively. Forler fails to explicitly teach, further comprising: including both said first and second data streams in different Single Program Transport Streams, each of said different Single Program Streams being part of a Multiple Program Transport Stream which includes both of said different Single Program Transport Streams. However,

Safadi teaches multiplexing single program transport streams (SPTS's) into a multi-program transport stream (MPTS) for the purpose of digitizing and encoding according to digital standards (column 4 lines 45-67 and column 5 lines 30-50).

It would have been obvious for one of ordinary skill in the art to modify Forler by including both said first and second data streams in different Single Program Transport Streams, each of said different Single Program Streams being part of a Multiple Program Transport Stream which includes both of said different Single Program Transport Streams as per the teachings of Safadi for the purpose of digitizing and encoding according to digital standards.

12. In reference to claims to 59,70 and 77, Forler teaches the method and computer program product of claims 53,65 and 71 respectively. Forler fails to explicitly teach, wherein the act of reducing the data rate of the first data stream or eliminating the transmission of the first data stream to the client device includes: providing a stream of packets as part of a packet flow to a modified multiplexing device, said stream of packets including data packets which can be sent to the client device in said first data stream; operating the modified multiplexer to perform a filtering operation on said stream of packets to control the amount of data included in the first data stream; and operating the modified multiplexer to output said first data stream. However, Safadi teaches modifying a stream upon receiving an instruction to do so, and multiplexing the stream to perform a filtering operation on the stream (column 4 lines 45-67 and column 5 lines 30-50).

It would have been obvious for one of ordinary skill in the art to modify Forler by providing a stream of packets as part of a packet flow to a modified multiplexing device, said stream of packets including data packets which can be sent to the client device in said first data

stream; operating the modified multiplexer to perform a filtering operation on said stream of packets to control the amount of data included in the first data stream; and operating the modified multiplexer to output said first data stream as per the teachings of Safadi for the purpose of digitizing and encoding according to digital standards.

13. In reference to claims 60,64,69 and 78, Forler teaches the method and computer program product of claims 53,62,65 and 71 respectively. Forler fails to explicitly teach providing the second data stream to a device other than the client device. However, Safadi teaches where the streams are sent to multiple set-top boxes (column 7 lines 15-67).

It would have been obvious for one of ordinary skill in the art to modify Forler by providing the second data stream to a device other than the client device as per the teachings of Safadi so that multiple clients can all view, hear, or read the additional content added to the stream.

***Response to Arguments***

14. Applicant's arguments with respect to claims 53-81 have been considered but are moot in view of the new ground(s) of rejection.

15. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO

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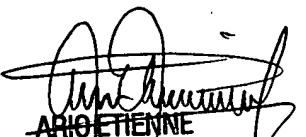
MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ramy M. Osman whose telephone number is (571) 272-4008. The examiner can normally be reached on M-F 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ario Etienne can be reached on (571) 272-4001. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

RMO  
July 28, 2005

  
ARIO ETIENNE  
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